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 11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA

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1 answered. In December 2007, those defendants stipulated to allow Plaintiff to amend the
2 complaint to add Patenaude & Felix (Patenaude) as a defendant. Patenaude, which is a collection
3 law firm, has been served but has not yet appeared.

4 **2. FACTS**

5 **Plaintiff:** In October 2005, Emmy Pasternak obtained a copy of her credit file from Trans
6 Union and learned that an imposter had opened a Capital One account in her name. She filed an
7 identity theft report with the San Francisco police and sent copies of it to the credit reporting
8 agencies and to all credit furnishers that appeared to have dealt with the imposter. From the
9 consumer disclosures she obtained from Trans Union, Experian and Equifax she learned that the
10 imposter had opened accounts with other credit grantors.

11 After she learned of the identity theft, Ms Pasternak spent an enormous amount of time
12 trying to stop the identity theft and to cure the problems it had created for her.

13 Capital One Bank billed Ms Pasternak for the fraudulent account it had opened for the
14 imposter. She notified Capital One that the account resulted from identity theft, but it ignored her
15 notices and continued its efforts to collect from her. It sent the account to collection agencies. She
16 notified them that the account was fraudulent. They apparently sent it back to Capital One
17 because it was fraudulent, but Capital One ignored them too and sent it to other collection
18 agencies. Ms Pasternak continued to notify the new collection agencies that it was fraudulent, but
19 Capital One would not quit. Next it sent the account to Patenaude, the debt collection law firm.

20 Patenaude sent Ms Pasternak a demand letter, to which she responded with a letter
21 informing it that the account was fraudulent and that she had already sent the police report to its
22 principal, Capital One. Patenaude ignored her and filed a collection action in Contra Costa
23 County. Ms Pasternak filed an answer and tried to file a cross-complaint which was not filed due
24 to a snafu with One Legal. A copy of the proposed cross-complaint was mailed to Patenaude,
25 however.

26 Patenaude refused to stipulate to permit Ms Pasternak to file her cross-complaint in the
27 Contra Costa lawsuit and, before she could move for court permission to file that cross-action,
28

1 Patenaude dismissed Capital One's complaint. This FCRA complaint had already been filed and
 2 served. Ms Pasternak amended the complaint herein and served Patenaude in December, 2007.
 3

4 Very briefly, the factual issues relating to the CRA defendants concern the identity of the
 5 credit grantors that the CRAs furnished with copies of Ms Pasternak's credit report and the
 6 CRAs' procedures to limit the furnishing of consumer reports to persons who have a permissible
 7 purpose to receive those reports. A primary focus is on their procedures to ensure that they are
 8 providing the report of the person who is seeking credit, rather than the victim of identity theft.
 9 This issue is discussed in depth in *Andrews v. TRW, Inc.*, 225 F.3d 1063 (9th Cir. 2000), reversed
 10 on other grounds, *TRW Inc. v. Andrews*, 534 U.S. 19 (2001). The case also involves the CRAs'
 11 reinvestigation procedures, i.e., the procedures they have for reinvestigating information that the
 12 consumer reports as inaccurate or fraudulent. *Guimond v. Trans Union*, 45 F.3d 1329 (9th
 13 Cir.1995).

14 With respect to Capital One, the factual issues concern the opening of the fraudulent
 15 account(s) and Capital One's response when it was notified by Ms Pasternak and later by the
 16 CRAs that the account(s) were the result of identity theft. Other factual issues concern the basis
 17 for its lawsuit against her and its decision to dismiss that lawsuit.

18 With respect to Patenaude, the factual issues concern its continued efforts to collect the
 19 fraudulent account after being notified that it was identity theft and its filing of a meritless
 20 lawsuit.

21 Plaintiffs' damages are factual issues. Under the FCRA, emotional distress damages are
 22 recoverable, regardless of whether there has been a credit denial or other pecuniary loss.
 23 *Guimond v. Trans Union, supra.*

24 **Experian:** Experian is a national credit reporting agency. Experian essentially functions
 25 as a storehouse of credit information concerning hundreds of millions of consumers nationwide,
 26 collecting and storing credit information originated by others. Experian does not generate credit
 27 information itself, nor does it make loans, decide who should receive credit, or set loan terms. It
 28 serves as a conduit for credit information that it obtains from Experian's customers or

1 "subscribers," which include banks, retailers, finance companies, and collection agencies.
2 Because its subscriber businesses have a direct relationship with consumers, Experian relies on its
3 subscribers to provide information about the subscribers' customers, including identifying
4 information, type and amount of credit extended, and credit performance.

5 Experian is still investigating Plaintiff's claims and her alleged communications with
6 Experian. As a result, Experian cannot comment on Plaintiff's specific factual allegations.
7 Experian, however, denies that it violated the FCRA negligently or intentionally. Experian
8 maintains that at all times it employed reasonable procedures in preparing Plaintiff's credit
9 reports. Additionally, it is Experian's position that its reinvestigation policies and procedures are
10 reasonable. Any damages Plaintiff may have sustained, therefore, were not caused by Experian.

11 **Equifax:** Equifax denies Plaintiff's claims and maintains that at all times it employed
12 reasonable procedures in preparing Plaintiff's credit reports. Equifax also maintains that it
13 conducted a reasonable reinvestigation of Plaintiff's disputes. Equifax also denies it disclosed
14 Plaintiff's credit file information to a third-party without a permissible purpose based on the
15 information provided to it by its subscriber(s). As a result, Equifax did not cause any damages
16 alleged by the Plaintiff.

17 **Trans Union:** Trans Union maintains reasonable procedures designed to ensure the
18 maximum possible accuracy of the information it reports. Trans Union accepted information
19 regarding Plaintiff from reliable sources. Trans Union has investigated Plaintiff's disputes made
20 with it and timely reported the results of those reinvestigations to Plaintiff. Trans Union also
21 updated this information contained in Plaintiff's Trans Union credit files pursuant to those
22 reinvestigations when warranted. Trans Union is still investigating Plaintiff's claims and her
23 communications with Trans Union, and, therefore, cannot comment on the factual allegations at
24 this time. Trans Union may reasonably rely upon the creditor, the party actually responsible for
25 the reinvestigation under 1681s-2(b). Even if Plaintiff has suffered any compensable damage, the
26 damage was not caused by Trans Union. Trans Union has not acted with negligence, malice or
27 intent to harm Plaintiff. Trans Union has not acted in reckless or conscious disregard for the rights
28

1 of Plaintiff. Some of Plaintiff's claims or alleged damages may be barred by the applicable
 2 statute of limitations. Trans Union's investigation into the facts and circumstances of this case is
 3 on-going.

4 **Capital One Bank, NA:** As set forth in Capital One's Motion to Dismiss, filed on
 5 January 7, 2008, Plaintiff's claims are not viable as a matter of law. To the extent these claims
 6 are not dismissed, Capital One denies that it negligently or willfully violated any statutes or
 7 caused any harm to Plaintiff.

8 **3. LEGAL ISSUES**

9 **Plaintiff:** The FCRA provides that the CRAs may furnish Ms Pasternak's credit report
 10 only to a person which it has reason to believe intends to use the information in connection with a
 11 credit transaction "involving the consumer on whom the information is to be furnished." 15 USC
 12 § 1681b(a)(3)(A). The CRAs have a statutory duty to maintain "reasonable procedures...to limit
 13 the furnishing of consumer reports to the purposes listed under section 1681b...." Ms Pasternak
 14 contends that the CRAs violated their duties under these provisions of the FCRA by giving Ms
 15 Pasternak's credit report to credit grantors who were dealing with an imposter, not with Ms
 16 Pasternak. She contends that the procedures that were in place at the CRAs were not reasonable.
 17 The Ninth Circuit has held that in this situation it is for a jury to determine whether the
 18 procedures were reasonable. *Andrews v. TRW, supra.*

19 Ms Pasternak contends that the CRAs also violated their reinvestigation obligations under
 20 15 USC § 1681i and that Capital One violated its reinvestigation obligations under 15 USC §
 21 1681s2-b.

22 Ms Pasternak also contends that Capital One and Patenaude violated California's Identity
 23 Theft Statute by continuing their efforts to collect the fraudulent account(s) from her after she had
 24 notified them of the identity theft. Civil Code § 1798.92 *et seq.* She has also sued those
 25 defendants for malicious prosecution because they sued her on the fraudulent account after they
 26 knew it was the result of identity theft.

27 **Defendants:** Capital One filed a Motion to Dismiss Plaintiff's claims against Capital One
 28

1 as alleged in the First Amended Complaint. Capital One's Motion to Dismiss is scheduled to be
 2 heard on February 12, 2008.

3 The Defendants deny Plaintiff's claims. The Defendants maintain that they employed
 4 reasonable procedures in preparing credit reports on Plaintiff and in conducting any
 5 reinvestigations of her disputes. (See individual defendant contention statements above)

6 **4. MOTIONS**

7 Capital One filed a Motion to Dismiss the Plaintiff's First Amended Complaint on
 8 January 7, 2008, that is noticed for hearing on February 12, 2008. All of the Defendants
 9 anticipate that each will file a motion for summary judgment or partial adjudication.

10 **5. AMENDMENT OF PLEADINGS**

11 **Plaintiff:** Ms Pasternak continues to suffer damages as a result of the violations alleged in
 12 the complaint. If the Court deems it necessary, she requests leave to amend at the close of
 13 discovery to specify all damages she has suffered as a result of the actions complained of,
 14 including damages that may be incurred between now and the time of trial. The damages flow
 15 from the actions alleged in the complaint, but they are ongoing and may continue to accrue.

16 **Defendants:** Defendants anticipate that an amendment may be necessary to add as a
 17 defendant the alleged imposter. After the parties engage in discovery, the Defendants will be able
 18 to better ascertain the necessity of adding the alleged imposter to this suit.

19 **6. EVIDENCE PRESERVATION**

20 **Plaintiff:** Ms Pasternak has preserved all evidence of which she is aware.

21 **Defendants:** Defendants are aware of their responsibility under the Federal Rules to
 22 preserve evidence relevant to the issues reasonably evident in this action, and are not aware of
 23 any document- or data-destruction program that would prevent them from fulfilling their
 24 responsibilities.

25 **7. DISCLOSURES**

26 **Plaintiff:** Ms Pasternak anticipates making full and timely initial disclosures by January
 27 15, 2008, unless the Court orders all parties to make disclosures earlier. The information will
 28

1 include the names and addresses (and phone numbers when known) of all witnesses known to
 2 her, with a brief description of the subject matter of each such witness, together with copies of all
 3 her documents.

4 **Defendants:** The Defendants anticipate making initial disclosures by January 15, 2008.

5 **8. DISCOVERY**

6 **8.1.** Changes in timing, form or requirement for Rule 26(a) disclosures.

7 **Plaintiff:** Ms Pasternak is willing and able to comply with the regular deadline for Rule
 8 26(a) initial disclosures and believes defendants should be required to do so also. No changes are
 9 needed.

10 **Defendants:** The Defendants will make their initial disclosures by January 15, 2008. The
 11 Defendants are currently unaware of any need to change the usual limitations on discovery. The
 12 Defendants propose that, in the event either side comes to believe it needs to conduct additional
 13 discovery, the parties should meet and confer at that time to attempt to reach agreement about the
 14 additional discovery. To the extent that the parties can agree there is a legitimate need for
 15 additional discovery, the parties will propose a stipulated change to the normal limits for the
 16 Court's approval. If no agreement can be reached, the requesting party can bring a motion at that
 17 time for permission to expand the limits.

18 **8.2.** Subjects on which discovery is needed, etc.

19 **Plaintiff:** Ms Pasternak has served interrogatories and document demands on the CRAs
 20 and Capital One. She has not served any discovery on Patenaude because it has not appeared.

21 Ms Pasternak needs discovery from the CRAs to learn what each of them did with respect
 22 to the information they maintain on Ms Pasternak and what their procedures are. Also, she needs
 23 discovery relating to the CRAs' reinvestigation of the information she disputed in her credit files.
 24 She intends to follow up the initial round of discovery with additional interrogatories and
 25 document demands where needed and depositions of the CRAs corporate representatives and the
 26 employees who actually worked on her file.

27 With respect to Capital One, Ms Pasternak needs discovery on all accounts that it
 28

1 attributed to her and its files and records of those accounts. She needs depositions from the
2 corporate representative and from the persons who investigated her complaints that the accounts
3 were the result of identity theft. She will also need to depose the persons who decided to file the
4 lawsuit against her and then to dismiss it.

5 Ms Pasternak needs similar discovery from Patenaude.

6 Ms Pasternak suggests that discovery remain open until September 1, 2008.

7 **Defendants:** This case involves numerous parties, each of which will have to engage in
8 independent fact and expert discovery. The Defendants anticipate that they will seek fact
9 discovery regarding any communication by Plaintiff with respect to her credit report, any
10 subsequent communication between and among the Defendants with respect to any such
11 complaint by Plaintiff, and any investigations conducted by any Defendant. Additionally, the
12 Defendants anticipate that it will be necessary to obtain Rule 26(a)(2) reports from and depose
13 experts. The Defendants believe that discovery will be needed on the following factual issues:

- 14 • Facts and circumstances surrounding the alleged theft of Plaintiff's
15 personal identifiers.
- 16 • Facts and circumstances surrounding the alleged imposter's use of
17 Plaintiff's personal identifiers.
- 18 • Facts and circumstances surrounding Plaintiff's alleged dispute of credit
19 information to Defendants Experian, Equifax and Trans Union.
- 20 • Facts and circumstances surrounding the respective Defendant credit
21 reporting agencies' reports of credit information related to Plaintiff.
- 22 • Facts and circumstances surrounding the notification of a dispute to and
23 conduct of investigation by the respective Defendant furnishers of
24 information.
- 25 • Whether Defendants Experian, Equifax or Trans Union negligently and/or
26 willfully violated the Fair Credit Reporting Act as it pertains to credit
reporting agencies.
- 27 • Whether Defendants Capital One negligently and/or willfully violated the
28 Fair Credit Reporting Act as it relates to furnishers of information.
- Whether Defendant Capital One violated California Civil Code section
1798.92.
- The damages suffered by Plaintiff and whether any damages were caused
by negligent acts or omissions of the respective Defendants.

- 1 • Whether Plaintiff is comparatively at fault for or failed to mitigate any
2 resulting damages.
- 3 • Whether any Defendant may be liable for punitive damages under the Fair
4 Credit Reporting Act.
- 5 • Whether Plaintiff brought this action in bad faith or for the purpose of
6 harassment.
- 7 • Whether any Defendant may be immune, in whole or in part, from the
8 Plaintiff's claims under the Fair Credit Reporting Act.
- 9 • Whether the Plaintiff's claims, whole or in part, are subject to a privilege or
10 qualified privilege.
- 11 • Whether the Plaintiff's claims are precluded by the statute of limitations
12 and/or the doctrine of laches.

10 **8.3. Electronically stored information**

11 The parties agree that any responsive electronically stored information be produced in
12 hard copy.

13 **8.4. Privileged information and trial-preparation material**

14 **Plaintiff:** Ms Pasternak submits that any information that is claimed to be protected from
15 disclosure due to privilege or attorney work product claims must be identified in a privilege log.
16 That log must identify the documents or information that is being withheld from disclosure, the
17 basis for withholding the documents or information, and the factual basis for the claim. If the
18 claim involves the assertion that a lawyer was involved, the log must clearly identify who the
19 attorney is and who has received or seen the document or information and why it remains
20 privileged.

21 **Defendants:** In the event that a party inadvertently produces information that is protected
22 by the attorney-client privilege, work product doctrine or any other privilege, within a reasonable
23 time after the producing party discovers the inadvertent disclosure the producing party may make
24 a written request to the other parties to return the inadvertently produced privileged document.
25 All parties who received the inadvertently-produced document will either return the document to
26 the producing party or destroy the document immediately upon receipt of the written request. By
27 returning or destroying the document, the receiving parties are not conceding that the document is
28 privileged and are not waiving their right to later challenge the substantive privilege claim; except

1 that they may not challenge the privilege claim by arguing that the inadvertent production waived
2 the privilege.

3 **8.5. Changes in the limitations on discovery**

4 None are requested at this time.

5 **8.6. Protective Orders**

6 **Plaintiff:** Ms Pasternak proposed a protective order in a form that complies with this
7 Court's rule relating to protective orders. A copy is attached. Defendants have refused to stipulate
8 to that form of protective order and have proposed using the form protective order found on the
9 court's website. The parties disagree as to the appropriate form of order.

10 **Defendants:** Plaintiff's proposed protective order is unduly burdensome. The
11 Defendants request that the Court enter the form protective order found on the court's website.

12 **9. CLASS ACTIONS**

13 Not applicable.

14 **10. RELATED CASES**

15 None.

16 **11. RELIEF**

17 **Plaintiff:** Ms Pasternak seeks damages for her out of pocket expenses, lost wages,
18 emotional distress, embarrassment and humiliation. *See Guimond, supra*. Each defendant has
19 violated the FCRA or the FDCPA in its own way and has caused her damage which is separate
20 and distinct from the damages she has suffered from the actions of the other defendants. *Sloane v.*
21 *Equifax* --- F.3d ----, 2007 WL 4535267 (4th Cir. 2007). Plaintiff also seeks punitive damages for
22 the CRAs and Capital One's willful violations of the FCRA, (*Safeco Ins. v. Burr*, 127 S.Ct. 2201
23 (2007)), compensatory and statutory damages for Patenaude's violations of the FDCPA (15 USC
24 § 1692k), compensatory damages, civil penalties of \$30,000 per defendant and attorneys fees and
25 costs for Capital One's and Patenaude's violations of the Identity Theft Statute (Civil Code §
26 1798.93), and compensatory and punitive damages for malicious prosecution. Only a jury can
27 determine what is the appropriate amount of such damages. In *Sloane, supra*, the jury awarded
28

1 emotional distress damages of approximately \$114,000 and punitive damages of almost
 2 \$250,000, which was reduced by the Court of Appeal to \$150,000. Ms Pasternak also seeks
 3 attorney fees pursuant to the fee provisions of the FCRA, the FDCPA and the identity theft
 4 statute.

5 **Defendants:** The Defendants deny that Plaintiff is entitled to any relief.

6 **12. SETTLEMENT AND ADR**

7 There have been no ADR efforts to date. On December 26, 2007, the parties who have
 8 appeared executed and filed their Stipulation And [Proposed] Orders Selecting ADR Process.
 9 The parties agreed to attend mediation by May 15, 2008.

10 **13. CONSENT TO MAGISTRATE JUDGE**

11 **Plaintiff:** Ms Pasternak would be willing to consent to have a Magistrate Judges conduct
 12 all further proceedings, provided the parties can agree upon the Magistrate Judge to whom it
 13 would be transferred.

14 **Defendants:** The Defendants do not agree to have this matter transferred to a Magistrate
 15 Judge.

16 **14. OTHER REFERENCES**

17 This case is not suitable for such references.

18 **15. NARROWING OF ISSUES**

19 The parties are unable to narrow the issues, as the parties have not yet conducted
 20 discovery.

21 **16. EXPEDITED SCHEDULE**

22 Not applicable or possible.

23 **17. SCHEDULING**

24 **Plaintiff:**

25 Discovery Cutoff: September 1, 2008

26 Hearing for Dispositive Motions: September 15, 2008

27 Designation of Experts: October 15, 2008

1 Pretrial Conference: November 15, 2008

2 Trial: December 1, 2008

3 **Defendants:**

4 Discovery Cutoff September 12, 2008

5 Hearing for Dispositive Motions: October 14, 2008

6 Designation of Experts: August 1, 2008

7 Pretrial Conference: November 18, 2008

8 Trial: December 1, 2008

9 **18. TRIAL**

10 **Plaintiff:** Ms Pasternak has demanded a jury trial. She expects the trial will last about 6
11 court days.

12 **Defendants:** The Defendants believe that a trial would be completed in approximately 3
13 to 4 court days.

14 **19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

15 **Plaintiff:** Ms Pasternak has no such persons to disclose.

16 **Defendants:** The Defendants have filed their "Certification of Interested Entities or
17 Persons."

18 The persons identified by Defendant Experian are: "GUS, PLC; Parent company owning
19 100 percent of Experian Information Solutions, Inc."

20 **20. OTHER MATTERS**

21 None.

22 Dated: January 8, 2008

/s/ _____
Andrew J. Ogilvie, Attorney for Plaintiff Emelia M.
Pasternak

25 Dated: January 8, 2008

/s/ _____
Donald Bradley, Attorney for Defendant Trans Union, LLC

28 Dated: January 8, 2008

/s/ _____
Thomas Quinn, Attorney for Defendant Equifax Information
12 Joint Case Management Statement Case No.
3:07-CV-04980

1 Dated: January 8, 2008

Services, LLC

2 /s/ _____

3 David Wallach, Attorney for Defendant Experian
Information Solutions, Inc.

4 Dated: January 8, 2008

5 /s/ _____

6 Veronica Kuiumdjian, Attorney for Defendant Capital One
7 Bank, N.A.

8 SFI-576597v1

9 **Certification of holographic signatures:**

10 I certify that I have in my file fax signed authorizations to file this
document from all persons designated by the “/s/.”

11 I declare that the foregoing is true and correct. Executed in San Francisco, California on
12 January 8, 2008.

13 /s/ _____

14 Andrew J. Ogilvie

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Attorneys for Plaintiff Emelia M. Pasternak

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EMELIA M. PASTERNAK,) Case No. 3:07-cv-04980 MJJ
Plaintiff,)
v.) [Proposed]
TRANS UNION, LLC, et al.,) PROTECTIVE ORDER
Defendants.)

)

It appears that the parties anticipate discovery and production of documents which may be the proper subject of a protective order under FRCP 26(c), and that each of the parties will likely seek such protection for information to be produced in discovery. In order to assist in the timely completion of discovery without undue delay or unnecessary motion practice, the Court enters this Protective Order.

Confidentiality as a Basis of Non-Disclosure

Having provided the parties a mechanism for the protection of documents and other information of a confidential nature, the parties may not assert the confidential nature or trade secret status of documents, testimony or other information as a basis of non-disclosures.

1 **Designation of Confidentiality**

2 A party responding to requests for production or interrogatories may – acting in good
3 faith – designate the responsive information to that discovery as “Confidential” if good cause
4 exists for the designation. That party shall make the designation by producing the information
5 and affixing a stamp conspicuously designating the information as “Confidential.” The party
6 making the designation shall serve with the information a log of all information designated as
7 confidential and identify the each basis upon which the designation is made pursuant to FRCP
8 26(c). The failure to designate the information as “Confidential” or provide the log waives
9 any such designation and the material in question is no longer subject to the protection in this
10 Order.

11 A party wishing to designate portions of a deposition “Confidential” pursuant to this
12 Order must order the deposition transcript within 2 days after the conclusion of the deposition
13 from the court reporter for regular turnaround. The designating party may – acting in good
14 faith – designate those portions of the transcript “Confidential” if good cause exists for
15 designating such portions of the testimony Confidential. Within 14 days of the date the court
16 reporter sends out the transcript, the designating party must notify all counsel of record via
17 electronic mail or facsimile of the precise passages of testimony, by page and line numbers,
18 which are designated “Confidential.” For each portion of the transcript that is designated
19 “Confidential,” the designating party’s notice shall identify the each basis upon which the
20 designation is made pursuant to FRCP 26(c). The failure to designate the information as
21 “Confidential” or provide the log waives any such designation and the material in question is
22 no longer subject to the protection in this Order.

23 Counsel are cautioned that over-designation of documents or testimony may result in
24 sanctions. The filing of documents or testimony designated “Confidential” puts an additional
25 burden on the court. Often the party filing the material designated “Confidential” is not the
26 designating party. In that situation the party does not have the option to unilaterally de-
27 designate documents before submitting them to the court, and has no choice but to request

1 they be filed under seal. Over-designating documents can thus result in unnecessary work for
2 the Court in sorting the documents that deserve sealing from those that do not, as well as
3 additional work for the parties who must then re-file public versions of the non-confidential
4 documents. The best way to avoid this result is for counsel to use best efforts to make
5 appropriate designations at the outset, and to promptly de-designate a document when it
6 comes to counsel's attention that the document is over-designated.

7 **Protection of Information Designated as Confidential.**

8 Any information which is protected as confidential may only be used in this litigation
9 or litigation of similar cases against the party producing the information designated as
10 confidential. This information may only be disclosed to

- 11 • Other attorneys appearing in this case.
- 12 • Staff, office personnel, consulting attorneys, experts, and consulting experts
13 associated with the attorneys appearing in this case.
- 14 • Witnesses.
- 15 • Deponents.
- 16 • The Court and its personnel
- 17 • Court reporters engaged to transcribe the proceedings or discovery in this case.
- 18 • Other attorneys working on similar cases against the party having produced the
19 material designated as confidential who have agreed to be bound by this order.

20 Each person – excepting the Court and its personnel – who receives material subject to the
21 protections of this order shall be given a copy of this order prior to receiving the materials and
22 execute a copy of the acknowledgment attached Exhibit A to this order. No person apart from
23 counsel for the parties to this matter may be provided with any material designated as
24 “Confidential” unless that person has executed that acknowledgment.

1 **Challenges to Confidentiality of Designated Material**

2 If a party contends that any material is not entitled to confidential treatment, such
3 party at any time may give written notice to the party or non-party who designated the
4 material. The party or non-party who designated the material shall have fifteen (15) days from
5 the receipt of such written notice to apply to the Court for an order designating the material as
6 confidential. The party or non-party seeking the order has the burden of establishing that the
7 document is entitled to protection.

8 Notwithstanding any challenge to the designation of material as "Confidential" all
9 documents shall be treated as such and shall be subject to the provisions hereof unless and
10 until one of the following occurs: (i) the party or non-party who claims that the material is
11 confidential withdraws such designation in writing; (ii) the party or non-party who claims that
12 the material is confidential fails to apply to the Court for an order designating the material
13 confidential within the time period specified above after the receipt of a written challenge to
14 such designation or within the time allowed by Local Rule 79-5 when confidential material is
15 submitted to the court in connection with a dispositive motion or at trial; or (iii) the Court
16 rules the material is not confidential.

17 **Use of Confidential Materials in Dispositive Motions**

18 Any party that wants to use material which has been designated confidential in
19 connection with a dispositive motion or in response to a dispositive motion must follow the
20 procedures set out in Local Rule 79-5. If the party wishing to use such material is not the
21 designating party, it shall file and serve an Administrative Motion for a sealing order and
22 lodge the documents or information in accordance with that Local Rule. Within five days
23 thereafter the designating party must file and serve a declaration establishing that the
24 designated information is sealable and must lodge and serve a narrowly-tailored proposed
25 sealing order, or it must withdraw the designation of confidentiality. Local Rule 79-5(d). The
26 party wishing to seal the information must meet the high "compelling reasons" threshold.

1 *Kamakana v. City of Honolulu*, 447 F.3d 1172 (9th Cir. 2006); *Pintos v. Pacific Creditors*
2 Ass'n, 2007 WL 2743502, *6 (9th Cir., Sept. 21, 2007).

3 **Use of Confidential Information at Trial**

4 Any party that believes that information or documents or witness testimony should be
5 or remain under seal during trial must comply with the requirements set out in this Court's
6 Standing Order for Cases Involving Sealed or Confidential Documents.

7 The Court will retain jurisdiction over the parties for purposes of enforcement or
8 modification of this order.

9 SO ORDERED this ____ day of November, 2007.

10
11

Martin J. Jenkins
United States District Court Judge

12 **STIPULATION**

13
14 The parties, by their counsel of record, stipulate to the entry of this Protective Order.

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